

**TENANCY TRIBUNAL AT** Waitakere

APPLICANT: Bjana Thompson  
Tenant

RESPONDENT: Ross Craigie, Sally Craigie  
Landlord

TENANCY ADDRESS: 4A Blacklock Avenue, Henderson, Auckland 0612

**ORDER**

1. Ross Craigie and Sally Craigie must pay Bjana Thompson \$13,020.44 immediately, as set out in the table below.

Description	Landlord	Tenant
Compensation: Failure to maintain and repair		\$10,000.00
Exemplary damages: S45 (1A)		\$3,000.00
Filing fee reimbursement		\$20.44
<b>Total award</b>		<b>\$13,020.44</b>
Bond		\$990.00
<b>Total payable by Landlord to Tenant</b>		<b>\$13,020.44</b>

**Reasons:**

- 1 Both parties attended the hearing. Mr Craigie attended for the landlord. He confirmed that he had the authority to attend on behalf of the landlord.
2. The tenants claims are:
  - That the landlord has breached s 45(1)(b) of the Residential Tenancies Act by failing to maintain the property to a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and are available for residential purposes.

- that the landlord has breached s45(1)(c) of the RTA in that the landlord has failed to comply with all requirements in respect of buildings, health and safety under any enactment so far as they apply to the premises.

## Background

3. The tenancy began on or about the 3 July 2012. The tenant lived at the house with her now ex-partner and their son now aged 22 months.
4. The house is weatherboard house built in or around 1971. The landlord purchased the property in or about 2009. The landlord also owns the neighbouring property, which shares a small common area with this property.
5. The tenant's rent has been \$330.00 throughout her tenancy. At the date of the hearing the tenant had given notice and her tenancy was due to end on the 21 July 2019.
6. The tenant tells me that she was motivated to bring her claim as a result of her son suffering chronic respiratory problems which, after assessment by the District Health Board were found to be exacerbated by the tenant's living conditions.

*Has the landlord failed to maintain the premises to a reasonable standard?*

7. The tenant presented a list of 22 areas of complaint about the landlord's failure to maintain and repair the premises these included:

*Leaking and damaged gutters, rotting window frames, sagging and mouldy ceiling in the front entrance, rotting weather boards, no rangehood in kitchen, rotten toilet floor and wall, exposed electrical board, large drafty (sic) gaps in floorboard, windows do not properly close- there are gaps, blocked drains causing flooding and pooling due to leaks, back stairs replaced but illegally installed and with no anchoring to the ground, leaks around light fittings, insulation not up to standard, unsafe rust repairs in oven.*

8. The tenant provided me with extensive photographs of the property. I am satisfied that those photos do not focus on only the 'bad' parts of the property but give a good indication of the state of the property.
9. Ms Craigie reviewed the photographs. He did not dispute that the photographs accurately portrayed the state of the house.
10. Both parties impressed me as being truthful when giving me evidence.
11. Mr Craigie confirmed that he had only done one inspection of the property in seven years. He said that over the time that he had owned the property the landlord:-
  - Replaced the hot water cylinder in 2014 (end of lifespan)
  - Replaced the wrong hotwater cylinder to the board)
  - Replaced letterbox as it was rusted through (2018)

- Window re glazed 2017
  - Replaced cistern toilet 2016
  - Chimney swept in 2016 (between 2013-2016 the tenant used the fire over that time).
  - Replaced Timber backstairs in March 2019 as they had rotted through.
12. Ms Craigie appeared to have a hands-off approach unless the tenants had breached their responsibilities or wanted the landlord to attend to something.
13. The tenant has a son who is 22 months old. He has lived at the house all his life. The tenant provided the Tribunal with a letter from her son's Doctor dated 20 June 2019 to Housing New Zealand, to try and obtain better housing, which described the toddler as having had multiple GP visits and Hospital visits due to respiratory infections since he was a baby.
- "He gets this frequent respiratory infection despite being on regular Asthma medications after being diagnosed as having Asthma this year.*
- The damp housing conditions he is currently living in seem to have a major effect on exacerbation of his asthma"*
14. On the 13 June 2019 a report on the property was completed by Kaainga Ora Healthy Homes – part of the Waitemataa District Health Board. That report was completed because of the tenant's son respiratory illness. The report writers visited the home, reviewed the son's medical history and interviewed Ms Thompson. The report highlights a number of areas of concern.
15. It notes
- "There are several windows and doors throughout the house which have gaps"*
- "Several of the window frames appear to be rotten, and the silicon moulds appear to be worn off and have come off leaving part of the window exposed and appear close to falling off"*
- "The ceiling of the main entrance to the house, appear to have water damage, with possible leaking."*
- "The carpet in the lounge and bedrooms belong to Ms Thompson. The carpet was installed by Ms Thompson"*
16. The report also states that the tenant told the report writer that she feels constantly stressed about what to do with her home, that the landlord continues to ignore her requests and that she feels "hopeless and scared" because she does not want to end up homeless if she complains.
17. The report recommends that:
- Ventilation was required in the bathroom and kitchen

- Window frames, security stays and draught stoppers should be repaired as well as investigation for leaks, and repair of window seals.
18. It also noted that mould was evident in the son's bedroom.
  19. On the 2 July 2019 Habitat for Humanity completed a Healthy Homes recommendations report- which notes several items that are in need of repair. Items identified in that report for repair by the landlord included rangehood extractor fan, heating, electrical issues, window pane repairs, gutter/downpipe and insulation.
  20. The tenant also told me that throughout the tenancy she made numerous requests for the landlord to maintain the property. She says that she has told the landlord that the house is cold and damp, of the leaks in the ceiling, the state of the windows and various other issues. The tenant says that the landlord often ignores or downplays these requests.
  21. The tenant's ex-partner who lived at the address until last year is a builder. He was able to remedy some of the issues, for instance there was an old concrete veranda on the property which was very slippery and uneven. The tenant fell over on the slippery surface when she was pregnant. The landlord did not want to replace it but allowed the tenants to erect a wooden deck over the top, which was safer and not slippery. The tenant is to remove the deck when she leaves.
  22. The tenant has also installed a front door between the outside door and the enclosed porch area, which is leaking, the roof is sagging. It is clear that without the installation of the second internal door that the living area would be exposed to draughts from the front door and water damage from the leaky ceiling.
  23. The tenant has put her own carpet in and has brought electric heaters for the bathroom and living area as there is no other source of heating.
  24. The tenant also sought assistance from Habitat for Humanity to see what assistance it could give her to make her house warmer, drier and healthier.
  25. The tenant has also put silicon on gaps in the window and closed off the fireplace. The tenant has gone beyond what should be expected of a tenant to keep her home habitable, warm and healthy.
  26. The landlord accepted in evidence that the tenant had kept the place in an excellent condition. The landlord also accepted that there were a number of issues with the property that required significant repair those included windows and joinery that needed to be replaced. Weather boards and cladding that needs to be replaced, chimney that needs repair, and the front porch area, which has a leaking ceiling.
  27. The landlord accepted that they had been remiss in their responsibilities to maintain the property. Whilst the landlord did not accept the extent of the tenant's claims, the landlord accepted that items like weatherboards and windows and guttering should have been better maintained.

28. The landlord confirmed that it had not planned to re-tenant the property when Ms Thompson left as it would be attending to this repair work.
29. The tenant also provided me with texts between the parties over the past year. Those texts confirm that the tenant has told the landlord about the issues with the damp and cold, chimney, window frames and windows, ventilation in the kitchen and bathroom, heating in the house and rotten weatherboards. The tenant notes that she waits too long for the landlord to attend to repair of these items when they need attention.
30. Having reviewed all the evidence and heard from each of the parties I am satisfied that the landlord has breached their obligations to maintain the property to a reasonable condition. The photographs of the property show that regular maintenance has been neglected, and that there are many items in need of repair and replacement.
31. It is clear from the reports gathered by the tenant that the house is currently not in a state that is suitable for the tenant and her son to live in and that the lack of repair and maintenance of the property has contributed to the tenant's son illness.
32. If the landlord had regularly inspected the property it would have been aware that there was ongoing issues with the state of the property. The property is nearing the end of its useful lifespan and the landlord should have been aware that it would require significant investment and maintenance to keep the house habitable.
33. I am satisfied that the tenant has raised her concerns with the landlord when it was appropriate. An obligation on the tenant to alert the landlord to any need for repairs and maintenance, does not excuse the landlord from making regular inspections of the property to ensure that the house is maintained and meets building and health regulations.
34. Although the tenant did not issue a 14 day notice to the landlord to remedy the breach I am satisfied that she did not do so for two reasons (1) that she did not know she should do so, and (2) that she was concerned that by asking the landlord to repair that she would jeopardise her tenancy.
35. The tenant gave evidence that she loved living in her location, she was close friends with her neighbours and they provided a lot of support for her and her son. Her text messages to the landlord and her evidence to me was that handing in her notice was a last resort, but she had done so as she could not risk living in the cold damp house any more with her son, and had lost faith in the landlord. I find that the landlord is in breach of their obligations to repair and maintain the property (sections 45 (1) (b) RTA).

***Has the landlord breached its obligations under the Healthy Homes Act (Section 45 (1) (bb) and the Housing Regulations 194 (HIR). (section 45 (1) (c)).***

36. The tenant filed her application on the 21 June 2019. This was a mere 9 days before the 1 July deadline for Healthy Homes. This hearing was held on the 24 July 2019, after the legislation came into the effect.
37. Under section 45(1)(bb) Residential Tenancies Act 1986 (RTA), the landlord has an obligation to comply with the Healthy Home Standards set out under the Residential Tenancies (Healthy Home Standards) Regulations 2019.
38. Because this tenancy started before 1 July 2019 the transitional healthy homes standards applicable for insulation are those set out in the 2016 Regulations (Schedule 1, clauses 2(3), and 3 2019 Regulations and Schedule 1AA HHG Act 2017).
39. The landlord also has an ongoing obligation to ensure that it complies with all legislation in respect to Health, Safety and Building in respect of the property. (section 45 (1)(c) RTA). This includes the HIR, The Residential Tenancies (Healthy Homes Standards) Regulations 2019 and the Building Act.

*Failure to insulate.*

40. From 1 July 2019 all residential tenancies must comply with the (Schedule 1, clauses 2(3), and 3 2019 Regulations and Schedule 1AA HHG Act 2017) which requires all buildings to be insulated in the ceiling, underfloor and walls to certain requirements unless they fall into limited exceptions, such as being inaccessible.
41. The tenant who was concerned about whether her home was compliant with the Healthy Homes contacted Greenstar energy solutions – insulation installers; in or about April 2019 and arranged for an insulation inspection. The landlord agreed to pay for the inspection (as it should have). An insulation report was done for the owner. The tenant did not get a copy of the inspection report despite asking the landlord for same. The landlord gave me a report today from June 2019. The landlord said today that it knew that the property was not compliant but that he did not have the funds to install the insulation.
42. The quote he received in June 2019 was for \$550.00 (the balance of the quote was for a heat pump and rangehood). I do not accept the landlord's excuse for not installing the insulation. The landlord owns 4 other residential property rentals. Being a landlord is a business and the landlord should have been aware that it had an obligation to comply with the law. Put simply the landlord knew it needed to comply but didn't. At today's hearing the landlord confirmed that it had yet to insulate the property and would not do so until after the tenancy had ended and the repairs had been made.

*Breaches of the Housing Improvement Regulations.*

43. The tenant alleges that the landlord has breached s 45 (1) (c) in that the landlord has failed to comply with the HIR.
44. These breaches include, breaches of:

- Regulation 6- Every living room shall be fitted with a fireplace and chimney or other approved form of heating.
  - Regulation 15 Every house shall be free of dampness
  - Regulation 17 (1) The material of which each house is constructed shall be sound, durable and where subject to the effects of weather, weatherproof, and shall be maintained in such a condition.
  - Regulation 17 (3) Every room in every house shall be adequately floored so as to have a washable and durable surface, and every floor shall be kept in a good state of repair free from crevices, holes and depressions.
45. The living room has a fireplace. In 2016 the tenant asked the landlord to have the chimney swept the tenant says at that time the person who did the chimney sweep told her she must not use the fireplace because of cracks in the chimney. The landlord disputes this, and says they were never told that the tenant could not use the chimney.
  46. The tenant says that she did tell the landlord this and expected that the chimney sweep also told the landlord as well. As a result, she has not been able to use the fireplace since 2016 and has boarded the fireplace up. She says she did that with the landlord's permission. The tenant also notes that the landlord has been to her house since that time – to install the window, and oven, and would have noticed the fireplace boarded up.
  47. I am satisfied that the landlord knew or ought to have known that the fireplace was unable to be used since 2016, and therefore has breached this regulation 6 HIR.
  48. The entrance to the house shows ceilings sagging and leaking. The pictures taken throughout the property show issues with leaking, mould and mildew. I am satisfied that the house is damp and therefore does not comply with regulation 15 HIR.
  49. As above the house is not waterproof, the windows, weatherboards and sills have rotted and not been replaced. Guttering has come away from the roof. The guttering cannot be working efficiently to remove water. The landlord has breached regulation 17 (1) HIR.
  50. The tenant alleges that the toilet floor has rotted away. The lino in the toilet does not reach the edges of the wall, making it impossible to wash. I am satisfied from the photos provided by the tenant that this is in breach of regulation 17 (3) HIR.
  51. The tenant has also claimed other breaches, that the fence on the boundary is unsafe, that common areas between her and her neighbours (owned by the landlord )have not been maintained, That the newly installed stairs have not been anchored correctly and that the kitchen drain does not work and overflows constantly.



52. It is not clear if the above matters are breaches of the regulations, but it is clear that they too show a complete neglect of maintenance by the landlord.

**Compensation.**

53. The tenant has asked globally for compensation of \$40,000.00 which is approximately one third of what she has paid in rent over her tenancy.

54. Whilst the breach is significant and ongoing, I do not consider that it is appropriate to award that sum. I consider the sum of \$10,000.00 an appropriate award. The factors that I have considered in making this award are:

- The extent and nature of the breaches.
- The length of the tenancy, and the length of time that the tenant had to deal with each breach
- The fact that the tenant tried to remedy many of these breaches.
- The lack of inspection by the landlord
- That the landlord accepted some liability for the breaches today (he accepted that the house is not in a good state of repair and that he had failed to maintain but did not accept all of the tenant's claims and did not accept that compensation of \$40,000.00 was appropriate).
- That the tenant had not issued a breach notice

**Exemplary Damages**

55. Exemplary Damages are awarded when a party commits an unlawful act.

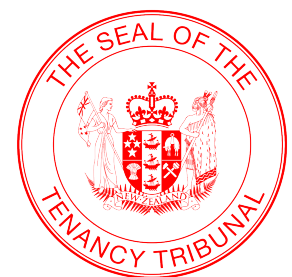
56. Section 45 (1A) provides that a breach of S45 (1)(a- (ca) by the landlord are unlawful acts for which exemplary damages may be awarded up to a maximum of \$4,000.00. See section 45(1A) and Schedule 1A Residential Tenancies Act 1986.

57. The landlord has breached s45 (1) (b) by failing to repair and maintain the property to a reasonable state of repair, Section 45 (1) (bb) by failing to insulate the property from 1 July to 24 July (date of hearing) and Section 45 (1) (c) failing to comply with all requirements in respect of buildings, health and safety under any enactment as they apply to this premises. I find the landlord has committed unlawful acts.

58. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) Residential Tenancies Act 1986.



59. I find that the landlord acted intentionally, it did not undertake any inspection of the property, it did not attend to repair or maintenance when requested by the tenant. It knew that that the property did not comply with insulation at the very latest in June 2019 and did not attend to installation of the insulation to ensure compliance.
60. Is it just to award exemplary damages? The tenant expressed her frustration with having to deal with the landlord about ongoing issues. She notes that the landlord consistently ignores her and her efforts to communicate regarding maintenance. He makes arrangements to attend to issues and then is a no show without contact. That she has had to shoulder expenses that should have been the landlord's responsibility to keep her home warm and dry, that she has suffered ongoing stress and anxiety about her son's living environment, and health. The tenant impressed me as being someone who just wants a warm dry house for her son, she is not looking for a windfall, she just wants a place that she feels safe for her and her son to live. She is disappointed and angry that her son has suffered ill health as a result of her living conditions.
61. There is strong public interest in having warm healthy homes, especially if children are living in those homes.
62. It is appropriate that exemplary damages are awarded in this instance. Those damages should be at the higher end of the scale because of extent and nature of the claim and that the effect of the landlord's failure to maintain this property and comply with the regulations has contributed in the tenant's son, who is only 2 years old, suffering respiratory disorders.
63. I have therefore awarded \$3000.00 in exemplary damages.
64. Because Bjana Thompson has substantially succeeded with the claim I have reimbursed the filing fee.



T Prowse  
20 August 2019

**Please read carefully:**

SHOULD YOU REQUIRE ANY HELP OR INFORMATION REGARDING THIS MATTER PLEASE CONTACT **TENANCY SERVICES 0800 836 262**.

MEHEMA HE PĀTAI TĀU E PĀ ANA KI TENEI TAKE, PĀTAI ATU KI TE TARI **TENANCY SERVICES 0800 836 262**.

AFAI E TE MANA'OMIA SE FESOASOANI E UIGA I LENEI MATAUPU FA'AMOLEMOLE IA FA'AFESO'OTAI'I LOA LE OFISA O LE **TENANCY SERVICES 0800 836 262**.

**Rehearings:**

You may make an application to the Tenancy Tribunal for a rehearing. Such an application must be made within five working days of the order and must be lodged at the Court where the dispute was heard.

The **only** ground for a rehearing of an application is that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur. Being unhappy or dissatisfied with the decision is not a ground for a rehearing. (See 'Right of Appeal' below).

**Right of Appeal:**

If you are dissatisfied with the decision of the Tenancy Tribunal, you may appeal to the District Court. You only have 10 working days after the date of the decision to lodge a notice of appeal.

However, you may **not** appeal to the District Court:

1. Against an interim order made by the Tribunal.
2. Against an order, or the failure to make an order, for the payment of money where the amount that would be in dispute on appeal is less than \$1,000.
3. Against a work order, or the failure to make a work order, where the value of the work that would be in dispute on appeal is less than \$1,000.

There is a \$200.00 filing fee payable at the time of filing the appeal.

**Enforcement:**

Where the Tribunal made an order that needs to be enforced then the party seeking enforcement should contact the Collections Office of the District Court on **0800 233 222** or go to [www.justice.govt.nz/fines/civil-debt](http://www.justice.govt.nz/fines/civil-debt) for forms and information.

**Notice to a party ordered to pay money or vacate premises, etc:**

Failure to comply with any order may result in substantial additional costs for enforcement. It may also involve being ordered to appear in the District Court for an examination of your means or seizure of your property.